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## Musk, dogecoin investors go yet another round with post-dismissal sanctions motions

By Alison Frankel

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Commentary On the Case by Alison Frankel



Reuters

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Representation of cryptocurrency dogecoin is seen in this illustration taken November 29, 2021. REUTERS/Dado Ruvic/Illustration Purchase Licensing Rights

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Oct 15 (Reuters) - A Manhattan federal judge may have thought he'd heard the last of a securities class action by dogecoin investors who accused Elon Musk and Tesla of rigging the price of the cryptocurrency when he tossed investors' fourth amended complaint in late August.

Oh how wrong he was.

Lawyers for Musk and the dogecoin investors' class, who have traded vicious barbs throughout the litigation, have now filed cross-motions for post-dismissal sanctions.

Musk and Tesla contend that after filing a series of frivolous "whack-a-mole" complaints, dogecoin plaintiffs' lawyer Evan Spencer tried to extract a settlement by obliquely offering to drop investors' appeal in exchange for \$5 million.

Spencer, in turn, insists that his complaints were all filed in good faith and were backed by "numerous scientific studies." He moreover asserts that Musk's outside lawyers from Quinn Emanuel Urquhart & Sullivan must be sanctioned and disqualified for improperly disclosing his confidential settlement order and trying to shut down his appeal.

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U.S. District Judge Alvin Hellerstein of Manhattan previously denied sanctions motions by both sides in this made-for-headlines case. The judge ruled in December that investors had "presented non-frivolous and good-faith issues to litigate," but that Spencer hadn't offered hard evidence to back his claim that Quinn Emanuel improperly leaked information about the case to news outlets.

Hellerstein's December order nonetheless left the door open for renewed sanctions motions. So, of course, both sides took him up on the offer.

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Spencer in an emailed statement said that he was "confident that defendants' motion for sanctions will be denied."

Musk's lawyers from Quinn Emanuel did not respond to my email queries on the latest sanctions spat. Tesla lawyer Allison Huebert also did not respond.

In case you've somehow managed to avoid hearing about the dogecoin litigation before this story, dogecoin investors alleged that Musk and Tesla engaged in a scheme to boost the price of dogecoin through Twitter posts and "publicity stunts," including Musk's appearance on Saturday Night Live. One iteration of the class complaint claimed that Musk engaged in insider trading when he allegedly sold \$124 million in dogecoin.

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Musk and Tesla have said throughout more than two years of litigation that there is no proof they even owned two crypto wallets that allegedly engaged in suspicious dogecoin trading – or, for that matter, that either Musk or Tesla ever sold dogecoin.

Hellerstein allowed the dogecoin investor class to refine their theories in four amended complaints but finally [dismissed](#) the case with prejudice on Aug. 29. The two-page dismissal ruling concluded that Musk's allegedly deceptive comments about dogecoin were nothing more than puffery that no reasonable investor could have relied upon. Hellerstein also said it was "not possible to understand" investors' allegations of a pump-and-dump insider-trading scheme.

Plaintiffs' lawyer Spencer filed a notice of appeal on Sept. 19.

But a few days later, on Sept. 25, according to an exhibit attached to Musk's motion for sanction, Spencer emailed Quinn Emanuel to say that "multiple top class action firms" had expressed interest in taking over the case if it was revived by the 2nd U.S. Circuit Court of Appeals. Spencer said in the email that his 130 or so dogecoin investor clients had lost about \$5 million but that his expert witness estimated classwide losses to be on the order of \$5 billion.

His appeal, Spencer said, could therefore "turn a \$5 million case into a \$5 billion case."

Quinn Emanuel said in its Sept. 27 sanctions motion that it regarded Spencer's email as an attempt "to extort a quick handout" after a prolonged "harassment campaign."

Under the Private Securities Litigation Reform Act, defense lawyers argued, Spencer is liable for litigating unfounded claims with the improper purpose of extracting a settlement. Quinn Emanuel asked Hellerstein to sock Spencer for \$750,000 – its legal fees for defending the allegedly frivolous case.

Spencer's Oct. 10 opposition brief pointed out that Hellerstein already said, in his December order refusing to grant Musk's previous motion for sanctions, that investors' claims were brought in good faith. Spencer conceded that his pleadings may have been "imperfect," but argued that each complaint, including the fourth amended complaint, was well-founded on studies showing Musk's heavy influence on dogecoin trading.

Spencer vehemently objected to Quinn Emanuel's description of his settlement proposal as "extortionate," arguing that there was nothing unethical or inappropriate about offering to settle the case for an amount that would make his clients whole.

On the same day that he filed his opposition to Quinn's motion for sanctions against him, Spencer docketed his own sanctions motion, accusing Quinn Emanuel of improperly disclosing his settlement offer in the hope of pressuring him to drop his appeal. Spencer also said Musk's lawyers had "fraudulently inflated their legal bills" as part of that pressure campaign.

He asked Hellerstein to disqualify the firm, seal the confidential settlement offer and award him and his clients \$375,000.

On Monday, Quinn Emanuel filed [a letter](#) asking Hellerstein temporarily to seal the Spencer email it previously filed as an exhibit to its sanctions motion. The firm said Spencer had not previously designated the settlement proposal as private or confidential. As of Tuesday afternoon, the judge had not acted on the request.

Quinn also asked for an extension until Oct. 25 to respond to Spencer's sanctions motion. Hellerstein, in other words, won't see the end of this case for a while.

Read more:

[Elon Musk, Tesla win dismissal of lawsuit claiming they rigged dogecoin](#)

[Musk, Tesla go on attack against Dogecoin plaintiffs lawyer](#)

[Dogecoin plaintiffs lawyers move to oust Musk, Tesla counsel after 'leaked' sanctions letter](#)

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Reporting By Alison Frankel

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